

Below is an Opinion of the Court.

  
RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case
	)	No. 10-30580-rld7
PAUL DOUGLAS KNIGHT,	)	
	)	
Debtor.	)	
_____	)	
ALLAN F. KNAPPENBERGER,	)	Adv. Proc. No. 10-03092-rld
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	
v.	)	
	)	
PAUL DOUGLAS KNIGHT,	)	
	)	
Defendant.	)	
_____	)	

On August 31, 2010, I entered a Judgment of Dismissal ("Judgment") in this adversary proceeding ("Adversary Proceeding"), based upon the Adversary Proceeding pleadings, the evidence presented at the August 2, 2010 trial ("Trial"), my taking judicial notice of docketed documents in the debtor defendant's ("Mr. Knight") chapter 7 bankruptcy main case, Case No. 10-30580-rld7 ("Main Case"), and plaintiff's ("Mr. Knappenberger") arguments at the Trial. Mr. Knight did not appear and

did not present any evidence at the Trial.

On September 7, 2010, Mr. Knappenberger filed a timely Motion Requesting an Amendment to Court's Ruling and Memorandum of Law ("Motion to Amend Judgment"), effectively requesting that I reverse the Judgment in favor of Mr. Knight and enter a judgment in favor of Mr. Knappenberger on his claim that his state court judgments against Mr. Knight should be excepted from Mr. Knight's bankruptcy discharge under 11 U.S.C. § 523(a)(6).<sup>1</sup>

Although Mr. Knappenberger cites Rule 8002(b) as authority for the Motion to Amend Judgment, I interpret the Motion to Amend Judgment as a motion pursuant to Civil Rule 59(e), applicable in bankruptcy cases under Rule 9023. Rule 8002(b) is implicated to the extent that it recognizes the filing of a motion of the type represented by the Motion to Amend Judgment as tolling the time for filing a Notice of Appeal until the entry of an order disposing of the Motion to Amend Judgment.

This Memorandum Opinion constitutes my findings of fact and conclusions of law, which I make pursuant to Civil Rule 52(a), applicable in this Adversary Proceeding pursuant to Rule 7052. I have jurisdiction to decide the Motion to Amend Judgment and to enter a final judgment in the Adversary Proceeding pursuant to 28 U.S.C. §§ 1334, 157(a), 157(b)(1), and 157(b)(2)(I).

## Factual Background

The relevant facts in this Adversary Proceeding are not in

<sup>1</sup> Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure are referred to as Civil Rules.

1 dispute. At the Trial, I took judicial notice of the docket and  
2 documents filed in Mr. Knight's Main Case for purposes of confirming and  
3 ascertaining facts not reasonably in dispute. Federal Rule of Evidence  
4 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006).

5 Mr. Knight filed his chapter 7 petition on January 27, 2010.  
6 Main Case Docket No. 1. At the time of his bankruptcy filing, Mr. Knight  
7 was unemployed and was receiving unemployment compensation benefits of  
8 \$172.50 a month. Main Case Docket No. 2. Mr. Knight's schedules  
9 reflected that he owned no real property, and his personal property  
10 assets, with an aggregate value of \$2,480, consisted of household goods  
11 and furnishings, books, clothing and a dog, all of which were claimed as  
12 exempt. Main Case Docket No. 1. Mr. Knight's schedules further reflect  
13 that he did not own a car. Id. The chapter 7 trustee filed a "No Asset"  
14 report on April 30, 2010, and Mr. Knight's discharge was entered on  
15 May 3, 2010. Main Case Docket Nos. 10 and 11. No adversary proceedings  
16 were filed to deny Mr. Knight a discharge in bankruptcy, and the  
17 Adversary Proceeding was the only adversary proceeding filed to except a  
18 debt from Mr. Knight's discharge. See Main Case docket and particularly,  
19 Docket No. 8.

20 In his Adversary Proceeding complaint, as amended  
21 ("Complaint"), Mr. Knappenberger stated a single claim for relief,  
22 asserting that a state court judgment that he obtained against Mr. Knight  
23 for \$1,634.39 plus costs of \$471.20, plus interest at 9%, and a  
24 supplemental judgment in the amount of \$20 per day, or \$600 a month, plus  
25 costs of \$687.03, plus interest at 9%, should be excepted from Mr.  
26 Knight's discharge under § 523(a)(6), as a debt for willful and malicious

1 injury to Mr. Knappenberger by Mr. Knight. See Adversary Proceeding  
2 Docket Nos. 1 and 30. In his Answer to the Complaint, Mr. Knight denied  
3 that his conduct that was the subject of the Complaint was willful and  
4 malicious for purposes of an exception to his discharge. See Adversary  
5 Proceeding Docket No. 9.

6 In his Trial Memorandum, Mr. Knappenberger states that he  
7 obtained a money judgment against Mr. Knight in state court. See  
8 Adversary Proceeding Docket No. 36, at p. 1. Mr. Knappenberger does not  
9 state what the money judgment was for. See Adversary Docket No. 36. In  
10 his schedules, Mr. Knight listed an undisputed debt to Mr. Knappenberger  
11 in the amount of \$1,634.39 for "Unpaid Attorney Fees Case No. 0711-12788"  
12 in Schedule F. See Main Case Docket No. 1. However, Mr. Knappenberger  
13 argues that because Mr. Knight did not appear for two scheduled judgment  
14 debtor examinations prepetition, the supplemental judgment that Mr.  
15 Knappenberger obtained in state court, again prepetition, for sanctions  
16 awarded against Mr. Knight as a result of his repeated failures to appear  
17 evidences the willful and malicious injury visited upon him by Mr. Knight  
18 and supports his claim for an exception to discharge under § 523(a)(6).  
19 Id.

20 As previously noted, Mr. Knight did not appear at the Trial.  
21 Mr. Knappenberger stated at the Trial that he had received a letter from  
22 Mr. Knight's mother advising that Mr. Knight had been imprisoned for a  
23 short term and would enter rehab upon his release.

24 Mr. Knappenberger submitted exhibit notebooks for the Trial  
25 including Exhibits 1-8, all of which were admitted without objection. In  
26 addition, I admitted Exhibits 9 and 10 at the Trial.

1           Exhibit 1 is the General Judgment ("General Judgment") entered  
2 in favor of Mr. Knappenberger and against Mr. Knight by default on  
3 January 22, 2008. Exhibits 2 and 3 are Mr. Knappenberger's two separate  
4 motions, affidavits and orders for judgment debtor examinations of Mr.  
5 Knight. Exhibit 4 is the state court's Order to Show Cause in Mr.  
6 Knappenberger's case against Mr. Knight, addressed to "Defendant, RICHARD  
7 MILLER" (?), to appear and explain why he should not be held in contempt  
8 for failure to appear at the scheduled judgment debtor examinations.  
9 Exhibit 5 is the Affidavit of Service of the Order to Show Cause on Mr.  
10 Knight. Exhibit 6 is the state court's Supplemental Judgment  
11 ("Supplemental Judgment") for sanctions against Mr. Knight for failing to  
12 appear at the Order to Show Cause hearing. Exhibit 7 apparently is a  
13 service copy of Exhibit 2. Exhibit 8 is the state court's Order to Show  
14 Cause addressed to Mr. Knight. Exhibit 9 ("Exhibit 9 Letter") is a  
15 letter sent by Mr. Knight to Mr. Knappenberger after Mr. Knappenberger  
16 had sued Mr. Knight in state court but before Mr. Knappenberger had  
17 obtained the General Judgment. Mr. Knappenberger quotes from the  
18 Exhibit 9 Letter in the Memorandum of Law included in the Motion to Amend  
19 Judgment. Omitted from the quoted material is an offer from Mr. Knight  
20 to settle Mr. Knappenberger's claim for \$700 and a reference to Mr.  
21 Knappenberger's status as "disbarred."<sup>2</sup> Mr. Knappenberger stated at the  
22 Trial that he rejected Mr. Knight's offer. The language of the Exhibit 9  
23 Letter is colorful and tends to indicate that relations between the  
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25           <sup>2</sup> On August 4, 2008, the Oregon Supreme Court suspended Mr.  
26 Knappenberger from the practice of law for two years. In re Allan F.  
Knappenberger, 344 Or. 559 (2008).

1 parties were anything but cordial as Mr. Knappenberger pursued his  
2 collection efforts in state court, but the Exhibit 9 Letter is  
3 essentially cumulative in characterizing the relationship between the  
4 parties as a dogged debt collector pursuing a bitter and impecunious  
5 debtor, feeling cornered. Exhibit 10 is a certified mail letter from Mr.  
6 Knappenberger to Mr. Knight, dated April 23, 2009, advising Mr. Knight of  
7 the second scheduled judgment debtor examination, noting that Mr. Knight  
8 did not attend the first scheduled judgment debtor examination, and  
9 further advising that if Mr. Knight did not attend the second scheduled  
10 judgment debtor examination, Mr. Knappenberger would seek contempt  
11 sanctions against him.

12           After admitting Mr. Knappenberger's exhibits and listening to  
13 his arguments at the Trial, I made oral findings and conclusions on the  
14 record and found ultimately that Mr. Knappenberger had not met his burden  
15 of proof to prevail on his § 523(a)(6) claim against Mr. Knight.  
16 Thereafter, the Judgment was entered, and Mr. Knappenberger filed his  
17 Motion to Amend Judgment.

#### 18                           Discussion

19           In his Motion to Amend Judgment, Mr. Knappenberger does not  
20 argue that any of my factual findings at the Trial were clearly  
21 erroneous. Rather, Mr. Knappenberger argues that my legal conclusions  
22 from the facts in the evidentiary record were wrong and accordingly  
23 argues that I should reverse the Judgment. I disagree for the following  
24 reasons.

25           A complete analysis of the legal issues presented in this case  
26 requires a return to first principles. A primary objective of the

1 Bankruptcy Code is to provide a fresh start for debtors overburdened by  
2 debts that they cannot pay. As stated by the Ninth Circuit in Toys "R"  
3 Us, Inc. v. Esgro, Inc. (In re Esgro, Inc.), 645 F.2d 794, 798 (9<sup>th</sup> Cir.  
4 1981), quoting from Williams v. U.S. Fidelity & Guar. Co., 236 U.S. 549,  
5 554-55 (1915):

6           One of the primary goals of the Bankruptcy [Code] is  
7           "to relieve the honest debtor from the weight of  
8           oppressive indebtedness and permit him to start afresh  
          free from the obligations and responsibilities  
          consequent upon business misfortunes."

9 See Devers v. Bank of Sheridan, Montana (In re Devers), 759 F.2d 751,  
10 754-55 (9<sup>th</sup> Cir. 1985). No issues have been raised in this Adversary  
11 Proceeding about Mr. Knight's veracity.

12           Accordingly, I start from the proposition that the exception  
13 to discharge provisions of the Bankruptcy Code are to be interpreted  
14 strictly in favor of debtors, such as Mr. Knight, and the plaintiff, such  
15 as Mr. Knappenberger, in exception to discharge litigation bears the  
16 burden of proof to establish each element of his claim by a preponderance  
17 of the evidence. See Grogan v. Garner, 498 U.S. 279 (1991); First  
18 Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9<sup>th</sup> Cir. 1986).

19           Section 523(a)(6) provides an exception to the debtor's  
20 discharge "for willful and malicious injury by the debtor to another  
21 entity or to the property of another entity." The Supreme Court analyzed  
22 § 523(a)(6) in Kawaauhau v. Geiger, 523 U.S. 57 (1998).

23           The word "willful" in [523](a)(6) modifies the word  
24           "injury," indicating that nondischargeability takes a  
25           deliberate or intentional injury, not merely a  
26           deliberate or intentional act that leads to injury....  
          Moreover, as the Eighth Circuit observed, the

1 [523](a)(6) formulation triggers in the lawyer's mind  
2 the category "intentional torts," as distinguished  
from negligent or reckless torts.

3 Id. at 61 (emphasis in original).

4 In Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154 (9<sup>th</sup> Cir.  
5 1992), the Ninth Circuit stated:

6 It is well settled that a simple breach of contract is  
7 not the type of injury addressed by § 523(a)(6).  
(citations omitted) An intentional breach of contract  
8 is excepted from discharge under § 523(a)(6) only when  
it is accompanied by malicious and willful tortious  
9 conduct. (citations omitted)

10 These principles were forcefully restated by the Ninth Circuit in  
11 Lockerby v. Sierra, 535 F.3d 1038, 1040-41 (9<sup>th</sup> Cir. 2008):

12 We begin from the proposition that tortious conduct is  
13 a required element for a finding of  
nondischargeability under § 523(a)(6).... [Petralia v.  
14 Jercich (In re Jercich), 238 F.3d 1202 (9<sup>th</sup> Cir. 2001)]  
holds that liability for a breach of contract need not  
15 be wholly independent from liability for the tort in  
order for the tortious conduct to give rise to  
nondischargeability under § 523(a)(6).... Jercich  
16 rejects a definition of tortious conduct that would  
permit a finding of nondischargeability under  
17 § 523(a)(6) only "if the conduct at issue would be  
tortious even if a contract between the parties did  
18 not exist."... But far from doing away with the  
tortious conduct requirement, Jercich affirms it....  
19 Contrary to Lockerby's argument, conduct is not  
tortious under § 523(a)(6) simply because injury is  
20 intended or "substantially likely to occur," but  
rather is only tortious if it constitutes a tort under  
21 state law.

22 The General Judgment is nothing more than a default money  
23 judgment for unpaid attorney fees, awarding damages for a breach of a  
24 contract obligation. See Exhibit 1. As such, as a matter of law, under  
25 principles embraced by the Ninth Circuit in decisions from Riso and  
26 Jercich through Lockerby, it does not support an exception to discharge



1 judgment against Mr. Knight under § 523(a)(6).

2 The Supplemental Judgment is different. It awards remedial  
3 sanctions for Mr. Knight's "willful contempt of court" for failing to  
4 appear at two scheduled judgment debtor examinations. However, it must  
5 be examined in terms of the elements required to establish a claim for  
6 relief under § 523(a)(6).

7 The standards for willfulness and maliciousness under  
8 § 523(a)(6) are distinct. In order to find that an injury was "willful,"  
9 I must find that the debtor acted either with a subjective intent to harm  
10 or a subjective belief that harm was substantially certain to result from  
11 his conduct. Carillo v. Su (In re Su), 290 F.3d 1140, 1144-46 (9<sup>th</sup> Cir.  
12 2002); and In re Jercich, 238 F.3d 1202.

13 "Malice" concerns "(1) a wrongful act, (2) done intentionally,  
14 (3) which necessarily causes injury, and (4) is done without just cause  
15 or excuse." Murray v. Bammer (In re Bammer), 131 F.3d 788, 791 (9<sup>th</sup> Cir.  
16 1997) (citing In re Cecchini, 780 F.2d 1440, 1443 (9<sup>th</sup> Cir. 1986)). Also  
17 see In re Su, 790 F.3d at 1146-47.

18 Under the Supplemental Judgment, Mr. Knappenberger was awarded  
19 costs of \$687.03 and "\$20.00 per day or \$600.00 per month" until Mr.  
20 Knight appeared for a judgment debtor examination. See Exhibit 6, at p.  
21 2. In his prayer for relief in the Complaint, Mr. Knappenberger requests  
22 that those amounts, plus 9% interest (the Oregon state general judgment  
23 rate under ORS § 82.010(2)), be excepted from Mr. Knight's discharge  
24 "until paid." If I granted that prayer, the subject amounts plus simple  
25 interest over one year would accumulate to a debt of \$8,796.86 in  
26 relation to an uncontested unpaid debt for legal services of \$1,634.39,

1 that has been discharged.

2 Mr. Knappenberger primarily relies on the decision of the  
3 Eighth Circuit in Siemer v. Nangle (In re Nangle), 274 F.3d 481 (8<sup>th</sup> Cir.  
4 2001), as support for his arguments for reversal in the Motion to Amend  
5 Judgment. The underlying causes of action in the Nangle case were  
6 fundamentally tortious, alleging violations of federal debt collection  
7 statutes and Illinois consumer fraud statutes. Id. at 483.<sup>3</sup> The jury  
8 found generally in favor of the plaintiff, Ms. Siemer, and awarded her  
9 punitive damages. Id.

10 Ms. Siemer registered her judgment and filed a state court  
11 motion to compel Mr. Nangle to produce documents disclosing his assets.  
12 Id. at 484. An order was entered granting the motion. After Mr. Nangle  
13 failed to comply with the order, the state court found him in contempt  
14 and imposed what it characterized as a "compensatory fine" against him.  
15 Id.

16 The Eighth Circuit concluded that the contempt order  
17 established Mr. Nangle's "willful and malicious" conduct for purposes of  
18 § 523(a)(6) in the circumstances of the case before it. The state court  
19 specifically had found that Mr. Nangle's conduct was "willful" and that  
20 his actions were "designed to interfere with [Ms. Siemer's] efforts to  
21 collect the judgment against" Mr. Nangle. Id. However, the Eighth  
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23 <sup>3</sup> Ms. Siemer's state court judgment included the following: "(1)  
24 Mental Distress, Embarrassment, Shame, & Humiliation: \$6,000.00; (2)  
25 Deprivation of the Use of Property: \$1,000.00; (3) Exemplary Damages:  
26 \$20,000.00; (4) Attorney's Fees: \$12,410.00; (5) Costs: \$1,313.32; and  
(6) Attorney's Fees on Appeal: \$2,118.37." Siemer v. Nangle (In re  
Nangle), 281 B.R. 654, 656 (BAP 8<sup>th</sup> Cir. 2002).

1 Circuit specifically declined to find that failure to comply with a court  
2 order constituted willful and malicious conduct as a matter of law. Id.

3 In this case, the Supplemental Judgment includes a finding that  
4 Mr. Knight's failures to appear for scheduled judgment debtor  
5 examinations were willful. However, the state court made no findings as  
6 to Mr. Knight's intent in failing to appear. See Exhibit 6.

7 There is ample evidence in the record before me to establish  
8 that Mr. Knight was given notice of the scheduled judgment debtor  
9 examinations and the Order to Show Cause hearing before the state court.  
10 He did not appear at any of those proceedings—just as he failed to appear  
11 at the Trial. As I stated orally at the Trial, Mr. Knight's continued  
12 failures to appear at scheduled court proceedings apparently were  
13 willful, at least in the commonly accepted sense of the term "willful,"  
14 and have compounded the problems that Mr. Knight has faced in his  
15 dealings with Mr. Knappenberger, the state court and this court. I do  
16 not condone Mr. Knight's repeated failures to appear for scheduled  
17 proceedings. However, based on the record in this Adversary Proceeding,  
18 I cannot find that Mr. Knight's failures to appear for judgment debtor  
19 examinations in Mr. Knappenberger's state court case establish Mr.  
20 Knight's subjective intent to harm Mr. Knappenberger or Mr. Knight's  
21 subjective belief that harm was substantially certain to result to Mr.  
22 Knappenberger from his conduct.

23 The Exhibit 9 Letter indicates that Mr. Knight did not like Mr.  
24 Knappenberger or his collection tactics, and Mr. Knight would not make it  
25 easy for Mr. Knappenberger to collect his unpaid fees if he did not  
26 accept Mr. Knight's settlement proposal included in the Exhibit 9 Letter.

1 However, the Exhibit 9 Letter does not indicate where Mr. Knight would  
2 come up with the funds to pay a settlement, and all of the evidence I  
3 have from Mr. Knight's chapter 7 schedules is that Mr. Knight had no  
4 nonexempt assets available to pay either the General Judgment or the  
5 Supplemental Judgment. As I stated at the Trial, you cannot collect a  
6 judgment from an empty sack.

7           At all times relevant to Mr. Knappenberger's state court  
8 lawsuit against Mr. Knight, Mr. Knappenberger was proceeding pro se and  
9 was not authorized to practice law. Under the circumstances, Mr. Knight  
10 had no reason to know that his failures to appear for judgment debtor  
11 examinations would result in any financial injury to Mr. Knappenberger.  
12 Accordingly, while I agree with, and am bound by, the state court's  
13 conclusion that Mr. Knight's failures to appear for the two scheduled  
14 judgment debtor examinations were "willful," I do not find that Mr.  
15 Knappenberger has met his burden of proof to establish "willfulness"  
16 under Ninth Circuit standards for purposes of obtaining an exception to  
17 discharge judgment against Mr. Knight under § 523(a)(6).

18           With respect to "malice," while I am prepared to find, as I  
19 stated at the Trial, that Mr. Knight's failures to appear for the  
20 scheduled judgment debtor examinations in Mr. Knappenberger's state court  
21 lawsuit against him were intentional, wrongful and without just cause or  
22 excuse, I cannot find from the record before me that they necessarily  
23 caused injury to Mr. Knappenberger. There is no evidence in the record  
24 that in the absence of a settlement, as proposed in the Exhibit 9 Letter  
25 in the early stages of Mr. Knappenberger's state court litigation against  
26 Mr. Knight, Mr. Knappenberger ever could have collected any amount of the

1 General Judgment or the Supplemental Judgment from Mr. Knight. The  
2 schedules filed by Mr. Knight under penalty of perjury with his  
3 bankruptcy petition, and never challenged, reflect that he owned fully  
4 exempt personal property valued at less than \$2,500 in the aggregate,  
5 including his dog. Further, at the time of his bankruptcy filing, Mr.  
6 Knight was unemployed, and there is no evidence in the record that he was  
7 employed at the time that Mr. Knappenberger obtained the General Judgment  
8 or at any time thereafter. As a result, I reiterate my finding at Trial  
9 that Mr. Knappenberger did not meet his burden of proof to establish  
10 malice to support an exception to discharge judgment against Mr. Knight  
11 under § 523(a)(6).

12 In these circumstances, Mr. Knappenberger is seeking to obtain  
13 an exception to discharge judgment against Mr. Knight that would make Mr.  
14 Knight his economic slave in perpetuity for failure to pay a legal  
15 services bill for \$1,634.39. Mr. Knappenberger has failed to establish  
16 that § 523(a)(6) excepts Mr. Knight's debt to him from discharge. Mr.  
17 Knappenberger failed to prove that Mr. Knight intended to injure him,  
18 which is an element that must be proved to establish "willful" injury,  
19 when Mr. Knight failed to appear at his scheduled judgment debtor  
20 examinations. Mr. Knappenberger also failed to prove that the injury was  
21 "malicious"-the evidence did not establish that Mr. Knight's conduct  
22 necessarily caused injury. I will leave the Judgment in place. I will  
23 enter a separate order denying the Motion to Amend Judgment.

24 ###

25 cc: Allan F. Knappenberger  
26 Paul Douglas Knight